
In the 5

**United States Circuit Court
of Appeals**

For the Ninth Circuit

No. 4691

FRANK GATT,

Plaintiff in Error

vs.

UNITED STATES OF AMERICA,

Defendant in Error

UPON WRIT OF ERROR TO THE UNITED STATES DIS-
TRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION

Brief of Defendant-in-Error

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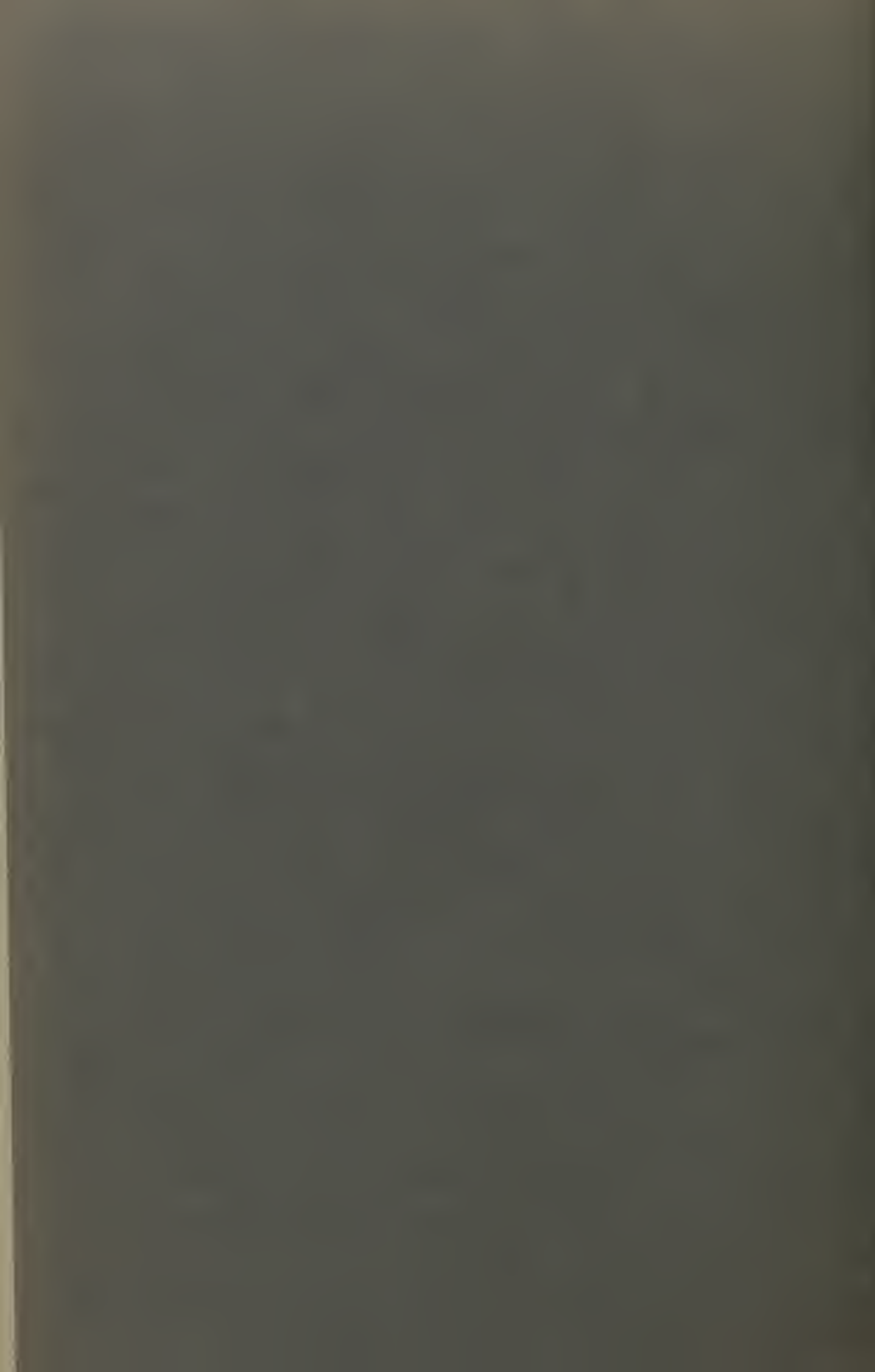
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STATEMENT OF THE FACTS

The place in question is known as the Lakeview Inn, situated on the Victory Highway near the City of Seattle. The agents raided the place and found a Japanese attendant upon the premises and a

person by the name of Billie Parentti or "Billie Parent," and Mustillo. They searched the premises and found thereon a certain quantity of Canadian beer, seven bottles of gin and three or four bottles of champagne and several bottles of whiskey. During the search, they found a number of "N. S. F." checks on the cash register in said place, having the name of "Frank Gatt" endorsed thereon.

Mr. McFarland, witness for the government and owner of the McFarland Lumber Company of Seattle, who ran a business very near the Lakeview Inn (Tr. 27)), testified that *Frank Gatt* came to his place of business and bought lumber to be delivered to the Lakeview Inn, some time during July or prior thereto, and that he had the lumber delivered and produced the receipt for the lumber, which had Gatt's signature on it as having received the lumber.

The defendant called a witness by the name of James Lochnane, who testified he was the owner of the Lakeview Inn and had leased it in 1922 and 1923 to a man by the name of Valenti and further testified *that he never had any dealings with Frank Gatt except to borrow money from him; that he*

had sold the place some time during the month of April. Upon cross-examination, he testified that he met Valenti at the time this lease was executed for the Lakeview Inn, in a bank on the corner of Fifth Avenue and Jackson Street, in the City of Seattle; that the lease was written in the bank, which bank is next door to the place of business of Frank Gatt; *that Frank Gatt was present at the time the lease was executed to Valenti*, and that *Gatt was the man who produced the lessee for the leasing of the premises*, and that Billie Parentti was there at the same time and also testified that he had never seen Valenti from that day to the day of the trial. (Tr. 36.)

ARGUMENT

The only question raised in the defendant's brief is the question in reference to the hearsay testimony, which tended to establish the control of the premises known as the Lakeview Inn. A number of witnesses testified, upon direct examination, that the Gatt brothers controlled these premises and were asked, upon cross-examination, how they knew it. They said that by reason of the fact that people out there told them they did.

Counsel has cited for his authority the case of *Katz v. Commissioner of Immigration*, 245 Fed. p. 316, a decision by this court, in which the court held that you could not prove a crime of accepting the earnings of a prostitute by establishing by hearsay testimony the fact that the defendant owned and controlled the building.

The government also wishes to cite this case for its authority on the above proposition. In this case, there was no other testimony except that of hearsay testimony. In the *Katz* case, the court said:

“These affidavits and protests contain the strongest showing made against Joseph Katz respecting his alleged receiving of the earnings of a prostitute or prostitutes. The very best that can be made out of the testimony, and the whole thereof contained in the record, is that it is WHOLLY hearsay and based upon common repute in the vicinity; the affiants generally ASSEVERATING UPON INFORMATION AND BELIEF. There is PRACTICALLY no SUBSTANTIVE TESTIMONY OF FACT. Locally—that is, in the State of California—the fact that a house is being conducted as a house of ill fame may be shown by common repute; but there is no rule of which we are aware by which the ownership or management of such a house may be so proven. Of course, if it were shown that Joseph Katz was conducting or managing such a house, it would be a reasonable inference and deduction that he was taking the

earnings of the inmates. THERE IS NOT A SYLLABLE OF TESTIMONY THAT HE ACCEPTED SUCH EARNINGS, EXCEPT THAT HE WAS THE OWNER OF THE HOUSE AND ACCEPTED RENTALS FROM THE OCCUPANT, WHICH IN ITSELF, AS WE HAVE SEEN, IS NOT SUFFICIENT TO CONDEMN HIM UNDER THE CHARGE. SOME SUBSTANTIVE EVIDENCE OF THE FACT OF MANAGING AND CONDUCTING SUCH A HOUSE, BESIDES MERE HEARSAY AND EXPRESSION OF OPINION AND BELIEF (which is practically the equivalent of NO COMPETENT EVIDENCE OF THE FACT SOUGHT TO BE PROVEN), is necessary UPON WHICH TO BASE THE INFERENCE OF HIS HAVING TAKEN THE EARNINGS OF the inmates.”

In the *Katz* case, the court can plainly see that there was no testimony whatever beside that of the hearsay, as plainly set out in the opinion. In this case, there is the lumberman’s testimony that he sold Frank Gatt lumber, that it was receipted for by Frank Gatt when it reached the premises, that a number of checks with his name written upon them were found in the cash register, from which it would be a reasonable inference that he had control over the premises, regardless of the hearsay testimony and that the other testimony was offered merely in support thereof. The government contends there was no error in this in view of the other testimony.

In reference to the point brought out in the later part of plaintiff in error's brief, Parentti was not present for trial but was apprehended at the Lakeview Inn. Gatt was asked what the nationality of defendant Parentti was and he testified that he was an Italian. His testimony was offered to show that the defendants were all Italians that were connected with the premises there, Parent's true name being Parentti. It can plainly be seen that the Gatt boys were not prejudiced by the fact that the jurw knew the nationality of the defendant who was not on trial, regardless of what affect it might have had upon the defendant Parentti if he had been present. It assuredly was a circumstance for the jury in the light of the testimony of Lochnane, who testified that Gatt was present at the time the lease was made and also Parentti.

There is plainly no error and the judgment of the lower court should be affirmed.

Respectfully submitted,

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